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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10-024,311	12/17/2001	Jeffrey D. Sheely	56695US002	6642

32692 7590 05/07/2003

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EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 05/07/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

keep in case

Office Action Summary

Application No.

10/024,311

Applicant(s)

SHEELY, JEFFREY D.

Examiner

Ula C Ruddock

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 17 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102/103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 6-12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Serra et al. (US 5,407,726). Serra et al. disclose adhesive tapes comprising polymeric backing layer and a pressure sensitive adhesive layer (abstract). A reinforcing scrim may be used in the adhesive tape. The backing layer comprises polyethylene (col 2, ln 26-32), which is the same type of backing layer used by Applicant (page 3, line 19 of the present specification). A nonwoven scrim may be incorporated into the tape to enhance tearability and strength and can comprise either polyester or cotton (col 3, ln 19-47). A portion of the adhesive layer will be present in the interstices of the scrim (col 3, ln 27-29).

Serra et al. disclose the claimed invention except for the teaching that the index of refraction of the material of the fibers is within plus or minus 0.2 of the index of refraction of the

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adhesive and the percentage of light reflected from the tape as diffuse light was at least 15% before the tape was adhered to a substrate and was reduced by at least 10% or 60% by adhering the tape to the substrate.

Although Serra et al. do not explicitly teach the claimed index refraction of the fibers and adhesive or the percentage of reflected light before and after adhering the tape to a substrate, it is reasonable to presume that these properties is inherent to the Serra et al. invention. Support for said presumption is found in the use of like materials (i.e. polyester or cotton nonwoven scrims, polyethylene backing layers, and adhesive layers). The burden is upon Applicant to provide otherwise. *In re Fitzgerald*, 205 USPQ 594. In addition, the presently claimed property of the index of refraction of the material of the fibers being within plus or minus 0.2 of the index of refraction of the adhesive and the percentage of light being reflected from the tape as diffuse light was at least 15% before the tape was adhered to a substrate and was reduced by at least 10% or 60% by adhering the tape to the substrate would obviously have been present once the Serra et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

Claim Rejections - 35 USC § 103

4. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serra et al. (US 5,407,726), as shown above, in view of Perez et al. (US 6,331,343). Serra et al. disclose the claimed invention except for the teaching that the scrim is formed of bundles.

Perez et al. disclose fibrous films used in tape backings (col 1, ln 11-12). The fibrous films are made of fiber or fiber bundles (col 15, ln 22 and col 17, ln 19). It would have been obvious to

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one having ordinary skill in the art at the time the invention was made to have used Perez's fiber bundles as the fibers of the scrim of Serra et al. motivated by the desire to create a tape that has a high modulus and tensile strength.

With regard to claims 3 and 5, Serra et al. disclose that the fibers have a denier of approximately 200 denier (col 4, ln 16) and that the tape has finger tearability (col 3, ln 26).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 703-305-0066. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

UCR *WCR*
May 5, 2003

Ula Ruddock